

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DOMINIGO MORAS,

Petitioner,

v.

CHARLES GREEN, et al.,

Respondents.

Civil Action No. 17-6837(SRC)

MEMORANDUM AND ORDER

This matter having come before the Court on Petitioner's submission of a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his prolonged detention. Petitioner's habeas Petition was submitted by counsel and docketed on September 6, 2017. (ECF No. 1.) Petitioner is currently detained at the Essex County Correctional Center and is a native and citizen of Cuba. (ECF No. 1, Pet. at ¶¶ 2, 5.) Petitioner is subject to a final order of removal entered in 1992 (*id.* at ¶ 5), and was released on an Order of Supervision in 1993. (*Id.* at ¶ 6). Petitioner was taken back into custody by Immigration and Customs Enforcement ("ICE") on July 27, 2017.¹ (*Id.* at ¶ 8.) In the Petition for relief, Petitioner states that his current detention is without legal authority and in contravention of Supreme Court authority. (ECF No. 1, Pet. at ¶ 13.)

"Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face." *McFarland v. Scott*, 512 U.S. 849, 856 (1994); *United States v. Thomas*, 221 F.3d 430, 437 (3d Cir. 2000). Rule 4 requires a district court to examine a habeas

¹ The Petition also states that Petitioner has not been receiving adequate medical care during his detention. The Court notes that this claim is not properly brought in a habeas petition; to the extent Petitioner is receiving inadequate medical care, he may seek relief through 42 U.S.C. § 1983 after exhausting his administrative remedies.

petition prior to ordering an answer and “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.” *See* Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b). Dismissal without the filing of an answer is warranted “if it appears on the face of the petition that petitioner is not entitled to relief.” *Id.*; *see also McFarland*, 512 U.S. at 856.

The Court has examined the Petition and determined that dismissal prior to submission of an answer and the record is not warranted. ↗

IT IS THEREFORE, on this 4 day of October, 2017,

ORDERED that, in accordance with Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b), this Court has examined the Petition and determined that dismissal prior to submission of an answer and the record is not warranted; the Court, however, directs the Clerk of the Court to dismiss all non-warden Respondents from the case; and it is further

ORDERED that the Clerk of the Court shall serve copies of the Petition and this Order upon Charles Green, by regular mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk of the Court shall forward a copy of the Petition and this Order to Chief, Civil Division, United States Attorney’s Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

ORDERED that, within 45 days after the date of entry of this Order, Respondent shall electronically file a full and complete answer to said Petition, which responds to the factual and legal allegations of the Petition; and it is further

ORDERED that the answer shall state the statutory authority for Petitioner's detention, *see* 28 U.S.C. § 2243, and provide the relevant legal analysis; and it is further

ORDERED that Respondent shall raise by way of the answer any appropriate defenses which Respondent wishes to have the Court consider, including, but not limited to, exhaustion of administrative remedies, and also including, with respect to the asserted defenses, relevant legal arguments with citations to appropriate legal authority; and it is further

ORDERED that Respondent shall electronically file with the answer certified copies of the administrative record and all other documents relevant to Petitioner's claims; and it is further

ORDERED that all exhibits to the Answer must be identified by a descriptive name in the electronic filing entry, for example:

"Exhibit #1 Transcript of [type of proceeding] held on XX/XX/XXXX" or

"Exhibit #2 Opinion entered on XX/XX/XXXX by Judge YYYY"; and it is further

ORDERED that Petitioner may file and serve a reply in support of the Petition within 30 days after the answer is filed; and it is further

ORDERED that, within 7 days after any change in Petitioner's custody or immigration status, be it release or otherwise, Respondents shall electronically file a written notice of the same with the Clerk of the Court; and it is further

ORDERED that the Clerk of the Court shall serve this Order on Petitioner by regular mail.

A handwritten signature in dark ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Stanley R. Chesler.

STANLEY R. CHESLER,
Senior United States District Judge